11-6220-20974-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR HENNEPIN COUNTY

In the Matter of the Claim of Ed and Annette Lenoch for Relocation Benefits	**ORDER ON CROSS-MOTIONS FOR SUMMARY DISPOSITION**

The above-entitled matter is pending before Administrative Law Judge Barbara L. Neilson. On March 22 and 23, 2010, the parties filed cross motions for summary disposition along with supporting memoranda. On April 5, 2010, the parties filed reply memoranda regarding the motions. The Administrative Law Judge heard oral argument on the motions at the Office of Administrative Hearings on April 19, 2010.

Jon Morphew, Attorney at Law, Schnitker & Associates, appeared on behalf of the Claimants, Ed and Annette Lenoch. Rick J. Sheridan, Assistant Hennepin County Attorney, appeared on behalf of Hennepin County.

This Order is the final administrative decision.[1] Judicial review of this order may be had by certiorari to the Minnesota Court of Appeals.

Based upon the Memoranda filed by the parties and the oral argument, and for the reasons set out in the following Memorandum,

IT IS HEREBY ORDERED:

(1) That the County's Motion for Summary Disposition is GRANTED.

(2) That the Claimants' Motion for Summary Disposition is DENIED and their appeal is DISMISSED.

Dated: June 4, 2010.

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

[1] Minn. Stat. § 117.52, subd. 4 (2008); Minn. Stat. § 14.62, subd. 4 (2008).

MEMORANDUM

In this contested case proceeding, the Claimants, Ed Lenoch and Annette Hubbard, are challenging the amount of the replacement housing payment proposed by Hennepin County as part of their claim for relocation benefits. Their claim arises from the County's acquisition of their property during the summer of 2009 for $249,900 in connection with a road improvement project involving County Road 81 (Project No. 81-0118).

The parties have filed cross-motions for summary disposition. The issue presented in the motions is whether or not the replacement housing payment made to the Claimants by the County complied with applicable requirements of the Minnesota Uniform Relocation Act and the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The County maintains that it appropriately paid the Claimants a housing replacement payment of $20,000 based upon a comparable replacement dwelling the County identified on July 27, 2009, that cost $269,900. The Claimants contend that they are entitled to an additional housing replacement payment of $115,100 based upon the $385,000 cost of a comparable replacement dwelling they submitted to the County in April 2009, *prior* to the purchase of their actual replacement home. They assert that their housing replacement payment should not be based upon the comparable home identified by the County on July 27, 2009, because that home was not identified by the County until *after* they purchased their actual replacement home.

Undisputed Facts

For the purposes of the cross motions for summary disposition, the parties have stipulated to the following facts. In connection with reconstruction and improvements to be made to County Road 81, Hennepin County determined that it would be necessary to acquire property located at 4724 Lakeland Avenue North, Crystal, Minnesota, that was occupied by the Claimants, Ed Lenoch and Annette Hubbard. Their home was a 1.5 story, four-bedroom, two-bathroom home with approximately 1,653 square feet.[2]

Annette Hubbard's sister, Victoria Hubbard, also resided in the Claimants' home. Due to medical conditions, Victoria Hubbard is confined to a hospital gurney. She lived on the ground-level floor of the home, where there was a bedroom, a bathroom, and an open floor plan necessary for the Claimants to be able to wheel her from room to room on her hospital gurney.[3]

When the appraisal of the Claimants' property was completed, the appraised value was $244,000. A minimum compensation study was completed

[2] Stipulated Facts, ¶ 1.
[3] *Id*., ¶ 2.

pursuant to Minn. Stat. § 117.187. It was determined that the minimum compensation should be $249,900.[4]

On November 13, 2008, the County made an initial written offer to acquire the Claimants' property for $249,900. At that time, the County, through its agent, SRF Consulting, also issued a Notice of Eligibility pursuant to the URA and the MURA.[5] At the time the Notice of Eligibility was issued, SRF Consulting performed interviews with the Claimants to advise them of relocation benefits for which they may be eligible, including a Replacement Housing Differential payment. At that time, the Claimants were presented with a Replacement Housing Study that determined that the amount of replacement housing differential payment for which they were eligible was $0.[6]

The Replacement Housing Study was performed by SRF Consulting in October, 2008, and contained three comparable replacement dwellings. All three comparable replacement dwellings were available on the market at the time of the study. At the time the study was presented to the Claimants on November 13, 2008, one of the comparable replacement dwellings listed on the Multiple Listing Service had expired. Another of the comparable replacement dwellings sold on November 14, 2008, leaving one of the original three comparable replacement dwellings available on the Multiple Listing Service.[7]

On April 9, 2009, counsel for the Claimants indicated to Hennepin County that the remaining comparable replacement dwelling was not sufficient due to the lack of handicap accessibility to accommodate Victoria Hubbard. At that time, the Claimants presented to the County a property they believed was an adequate comparable replacement dwelling. That home was located at 4439 Lakeland Avenue North and was available on the market at that time for $385,000. The property that was presented by the Claimants as comparable required the installation of ramps on the outside of the home to make it handicap accessible.[8]

On May 8, 2009, the remaining comparable replacement dwelling identified by SRF in its replacement study sold.[9]

On June 4, 2009, the Claimants' counsel requested that Hennepin County agree to have a second housing replacement study conducted due to the insistence of Claimants' counsel that the initial replacement housing study that had been conducted was defective. Hennepin County disputed that assertion, but agreed to perform the new study.[10] On June 12, 2009, SRF and the County

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[4] *Id*., ¶ 3.
[5] *Id*., ¶ 4.
[6] *Id*., ¶ 5.
[7] *Id*., ¶ 6.
[8] *Id*., ¶ 7. During the motion argument, the parties agreed that the written Stipulated Facts contained a typographical error and the correct date was April 9, 2009.
[9] *Id*., ¶ 8.
[10] *Id*., ¶ 9.

conducted a walk-through of the Claimants' property for the purpose of SRF completing a new housing replacement study.[11]

On June 25, 2009, the Claimants entered into a purchase agreement to convey their property to the County for a purchase price of $249,900. At the request of the Claimants, the closing date of July 17, 2009, was coordinated to coincide with the purchase of their replacement dwelling. In addition, at the Claimants' request, the agreement allowed the Claimants to remain in their property after the closing until August 5, 2009, without rent.[12]

On July 17, 2009, the Claimants closed on the sale of their property to Hennepin County.[13] On July 20, 2009, the Claimants completed the purchase of their replacement dwelling for a purchase price of $481,250. The replacement dwelling purchased by the Claimants required the installation of ramps on the outside of the home together with minor interior modifications to make it handicap accessible. Hennepin County made a $4,557.50 reimbursement to the Claimants for handicap accessibility modifications to their new home.[14]

On July 27, 2009, a new housing replacement study was completed by SRF and one comparable replacement dwelling was made available to the Claimants. The conclusion of the study indicated a replacement housing differential payment of $20,000. The parties agree that the property upon which this payment was based meets the definition of a comparable replacement dwelling under the URA.[15]

On August 6, 2009, the Claimants sent a letter to SRF laying out their request for a housing replacement payment based upon the comparable replacement dwelling previously submitted to the County on April 9, 2009. The County denied that request.[16]

The Claimants were paid the $20,000 replacement housing differential. The County also made certain moving payments and other incidental payments to the Claimants pursuant to the URA.[17]

Motion Standard

Both the Claimants and Hennepin County have moved for summary disposition. Summary disposition is the administrative equivalent of summary judgment.[18] Summary disposition is appropriate when there is no genuine dispute about the material facts, and one party must necessarily prevail when the

[11] *Id.*, ¶ 10.
[12] *Id.*, ¶ 11.
[13] *Id.*, ¶ 12.
[14] *Id.*, ¶ 13.
[15] *Id.*, ¶ 14.
[16] *Id.*, ¶ 15.
[17] *Id.*, ¶ 16.
[18] *Pietsch v. Mn. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004).

law is applied to those undisputed facts.[19] When considering a motion for summary disposition the decision maker must view the facts in the light most favorable to the non-moving party.[20] The moving party carries the burden of proof and persuasion to establish that no genuine issues of material fact exist.[21] The non-moving party cannot rely upon general statements or allegations, but must show the existence of specific material facts which create a genuine issue.[22]

Relevant Statutory and Regulatory Provisions

The Minnesota Uniform Relocation Act (the MURA) was enacted in 1973 and is codified in Minn. Stat. §§ 117.50 – 117.56. The MURA applies to acquisitions undertaken by any acquiring authority in which, due to the lack of federal financial participation, the relocation benefits under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the URA),[23] are not available. In such instances, the MURA requires that "the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by [the URA] and those regulations adopted pursuant thereto . . . ."[24] The MURA "is intended to make public funds available to reimburse relocation costs incurred by households and businesses displaced by public acquisitions of property" that do not involve federal funds.[25] If a person entitled to relocation assistance under the MURA does not accept the acquiring authority's offer, a contested case proceeding must be initiated in order to determine the relocation assistance that must be provided by the acquiring authority. The determination of the Administrative Law Judge regarding relocation assistance constitutes a final decision in the case under Minn. Stat. § 14.62, subd. 4.[26]

The primary purpose of the federal URA is to ensure that persons displaced as a direct result of federally assisted projects are treated fairly and equitably, so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole and the hardship associated with displacement will be minimized.[27] The statute has been "liberally interpreted to effectuate its 'generous' purposes."[28] The regulations adopted by

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[19] *Sauter v. Sauter,* 70 N.W. 2d 351, 353 (Minn. 1955).
[20] *Ostendorf v. Kenyon,* 347 N.W. 834 (Minn. Ct. App. 1984), Carlisle v. City of Minneapolis, 437 N.W. 2d 712, 715 (Minn. Ct. App. 1988).
[21] *Theile v. Stich*, 425 N.W. 2d 580, 583 (Minn. 1988).
[22] *Murphy v. Country House, Inc*., 307 Minn. 344, 351-52, 240 N.W. 2d 507, 512 (Minn. 1976).
[23] 42 U.S.C. § 4601 *et seq*.
[24] Minn. Stat. § 117.52, subd. 1.
[25] *In re Application for Relocation Benefits of James Brothers Furniture, Inc.,* 642 N.W.2d 91, 95 (Minn. App. 2002).
[26] Minn. Stat. § 117.52, subd. 4.
[27] 42 U.S.C. § 4621; *see also* 49 CFR § 24.1(b).
[28] *In the Matter of Wiseway Motor Freight, Inc.,* No. CX-99-648, 1999 WL 759999 (Minn. App. 1999) (attached to Claimants' Initial Memorandum in Support of Motion), at *3 (citing *Pou*

the Secretary of Transportation under the URA are organized in several subparts. Subpart A sets forth general information regarding the URA, including definitions of terms;[29] Subpart B specifies requirements that apply to the acquisition of real property for a project;[30] Subpart C addresses general relocation requirements governing the provision of relocation payments and other relocation assistance;[31] Subpart D relates to payments for moving and related expenses;[32] Subpart E addresses replacement housing payments;[33] Subpart F sets forth requirements relating to the provision of replacement housing payments to persons displaced from mobile homes;[34] and Subpart G relates to state agency certification requirements.[35] The URA rules also include Appendices A (Additional Information) and B (Statistical Report Form).

Under Subpart C of the URA regulations, persons scheduled to be displaced must be given a general written description of the acquiring agency's relocation program and, except in unusual circumstances, must be provided with at least 90 days advance written notice of the earliest date by which they may be required to move.[36] Except in emergency circumstances, the regulations require that no person shall be required to move unless at least one comparable replacement dwelling has been made available to that person, and note that, "[w]hen possible, three or more comparable replacement dwellings shall be made available."[37] Appendix A to the URA regulations further specifies that "the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals."[38]

In describing the relocation assistance advisory services to be provided by the acquiring agency, subpart C of the URA regulations states, in relevant part:

> (2) Services to be provided. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to: . . .
>
> > (ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other

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Pacheco v. Soler Aquino, 833 F.2d 392, 399 (1st Cir. 1987) and *Mississippi Dept. of Transp. v. B & G Outdoor*, 722 So.2d 1273, 1275 (Miss. Ct. App. 1998).

[29] 49 C.F.R. §§ 24.1 – 24.10.

[30] 49 C.F.R. §§ 24.101 – 24.108.

[31] 49 C.F.R. §§ 24.201 – 24.209.

[32] 49 C.F.R. §§ 24.301 – 24.306.

[33] 49 C.F.R. §§ 24.401 – 24.404.

[34] 49 C.F.R. §§ 24.501 – 24.503.

[35] 49 C.F.R. §§ 24.601 – 24.603.

[36] 49 C.F.R. § 24.203(a) and (c).

[37] 49 C.F.R. § 24.204(a).

[38] Appendix A to 49 C.F.R. Part 24 (Additional Information re 49 C.F.R. § 24.204(a)).

> assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.
>
> > (A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in Sec. 24.204(a).
> >
> > (B) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see Sec. 24.403(a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify. . . .[39]

Under the URA and Subpart E of the URA regulations, eligible displaced homeowners are entitled to receive a replacement housing payment if they have actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations and they purchase and occupy a decent, safe, and sanitary replacement dwelling within one year of certain specified dates.[40] The amount of the replacement housing payment is "limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later."[41]

Subpart E of the regulations states that the amount of the replacement housing payment "shall be the sum of: (1) [t]he amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling . . .; (2) [t]he increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling . . .; and (3) [t]he reasonable expenses incidental to the purchase of the replacement dwelling."[42] The regulations further state that the price differential to be paid under item (1) is "the amount which must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of: (i) [t]he reasonable cost of a comparable replacement dwelling . . .; or (ii) [t]he

[39] 49 C.F.R. § 24.205(c)(2)(ii).
[40] 42 U.S.C. § 4622; 49 C.F.R. § 24.401(a).
[41] 49 C.F.R. § 24.401(b).
[42] 49 C.F.R. § 24.401(b).

purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person."[43]

The URA and Subpart E of the regulations specify as a general rule that the replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500.[44] However, the URA and associated regulations require the acquiring agency to provide additional or alternative assistance under certain circumstances.[45] Specifically, in accordance with the "replacement housing of last resort" provision, the URA regulations state that the acquiring agency "shall provide additional or alternative assistance" in accordance with the rule "[w]henever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in Sec. 24.401 or Sec. 24.402, as appropriate."[46] The rule goes on to state that "[a]ny decision to provide last resort housing assistance must be adequately justified" either (1) on a "case-by-case basis, for good cause" giving appropriate consideration to the availability of comparable replacement housing in the project area, the resources available to provide such housing, and the individual circumstances of the displaced person; or (2) by a determination that last resort housing assistance is necessary for the area as a whole because there is little if any comparable housing, a project cannot proceed to completion in a timely manner without last resort housing assistance, and the method selected for providing last resort housing assistance is cost effective when all elements are considered.[47] The rule further indicates that methods of providing replacement housing of last resort include providing a replacement housing payment in excess of the limits set forth in 49 C.F.R. § 24.401 (discussed above, pertaining to 180-day homeowners) or 49 C.F.R. § 24.402 (setting forth other limitations pertaining to 90-day occupants or tenants); rehabilitating or making additions to an existing replacement dwelling; constructing a new replacement dwelling; providing a direct loan; relocating and/or rehabilitating a dwelling; agency purchase of land and/or a replacement dwelling and subsequent sale or lease to the displaced person; and removal of barriers for persons with disabilities.[48]

Key terms used in the URA and its regulations are defined in Subpart A of the regulations. A "comparable replacement dwelling" is defined as one which is:

(i) Decent, safe and sanitary . . .;
(ii) Functionally equivalent to the displacement dwelling . . .;
(iii) Adequate in size to accommodate the occupants;
(iv) In an area not subject to unreasonable adverse environmental conditions;

[43] 49 C.F.R. § 24.401(c).
[44] 42 U.S.C. § 4623(a); 49 C.F.R. § 24.401(b).
[45] 42 U.S.C. § 4626; 49 C.F.R. § 24.404.
[46] 49 C.F.R. § 24.404(a).
[47] *Id*.
[48] 49 C.F.R. § 24.404(c).

(v) In a location generally not less desirable than the location of the displaced person's dwelling . . ., and reasonably accessible to the person's place of employment;
(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. . . .;
(vii) Currently available to the displaced person on the private market [with certain exceptions for persons receiving government housing assistance]; and
(viii) Within the financial means of the displaced person.[49]

The URA and rules adopted thereunder further define a "decent, safe and sanitary" dwelling to be one which meets local housing and occupancy codes and certain specified standards.[50] For displaced persons with a disability, these standards include a dwelling that is "free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person"[51] and at a minimum should include doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights; kitchen cabinets and sinks at appropriate heights for access; and other items that may be necessary.[52]

With respect to the requirement that the comparable dwelling be "functionally equivalent" to the displacement dwelling, the URA rules and Appendix A to the rules indicate that the comparable replacement dwelling must "perform the same function" and "provide the same utility" as the displacement dwelling. While "the principal features must be present," the replacement dwelling "need not possess every feature of the displacement dwelling."[53]

Analysis

For purposes of these cross motions, there appears to be no dispute that the Claimants are eligible displaced homeowners who in fact purchased a replacement dwelling within the applicable time period. The only issue raised in this case involves the amount of the replacement housing payment to which the Claimants are entitled.

The Claimants argue that they are entitled to summary disposition because the County failed to comply with the replacement housing provisions of the MURA and URA. The Claimants first contend that the November 2008 housing replacement study was deficient because none of the three homes met

[49] 49 C.F.R. § 24.2(a)(6).
[50] 49 C.F.R. § 24.2(a)(8).
[51] 49 C.F.R. § 24.2(a)(8)(vii).
[52] 49 C.F.R. Part 24, Appendix A (Additional Information re 49 C.F.R. §24.2(a)(8)(vii)).
[53] 49 C.F.R. § 24.2(a)(6) and 49 C.F.R. Part 24, Appendix A (Additional Information re 49 C.F.R. § 24.2(a)(6)).

the requirements for a "comparable replacement dwelling" under the URA. In particular, the Claimants assert that two of the three homes did not meet the URA requirements because they were no longer available for sale on the market at the time they were presented to the Claimants, and that the third home also failed to meet the requirements because it was in a much less desirable location, it lacked the open floor plan and necessary main floor bedroom and bathroom for Victoria Hubbard, and it had a steep front entrance with numerous steps that would have made it very difficult to wheel Ms. Hubbard in and out of the house. Second, the Claimants assert that the County should have immediately performed a new housing study after they notified the County in April of 2009 that the remaining comparable replacement dwelling was not sufficient due to the lack of handicap accessibility to accommodate Victoria Hubbard, but the County failed to do so prior to the time that the Claimants purchased their replacement home. The Claimants maintain that they were forced to search for a new home without having any idea of the amount of the housing replacement payment for which they would be eligible, and argue that such a process violates the requirements of the URA.

The Claimants argue that the only home that was identified prior the purchase of their new home that met the requirements for a comparable replacement dwelling and could properly serve as the basis for the amount of the housing replacement payment is the property they presented to the County on April 9, which was located at 4439 Lakeland Avenue North and was available on the market at that time for $385,000. The Claimants assert that this home was located less than three blocks away from the Claimants' displacement home and thus was in a more desirable location than the home selected by the County; had an open floor plan on the main level and a main floor bedroom and bathroom; and had only a small front step that could have been easily entered by Ms. Hubbard's gurney. The parties stipulated that this property would have required the installation of ramps on the outside of the home to make it handicap accessible. The Claimants argue that the County improperly disregarded that home as a possible comparable replacement dwelling. They maintain that they are entitled as a matter of law to a housing replacement payment in the amount of $115,100, which reflects the difference between the cost of the comparable replacement dwelling they proposed ($385,000) and the amount the County paid to acquire their displacement dwelling ($249,900), minus the $20,000 already paid by the County.

In contrast, the County maintains that it complied with the MURA and URA and is entitled to judgment as a matter of law in this matter. The County stresses that the URA merely requires that persons to be displaced shall not be "*required to move* from his or her dwelling unless at least one comparable replacement dwelling . . . has been made available . . . ."[54] Because the Claimants were allowed to remain in their displacement dwelling beyond the July 17, 2009, closing date, until August 5, 2009, the County contends that August 5 is the

[54] 49 C.F.R. § 24.204(a) (emphasis added).

earliest date the Claimants can properly be viewed as having been required to move from their displacement dwelling. The County asserts that, on November 13, 2008, months before the Claimants signed a purchase agreement with the County and were required to move, the County's agent (SRF) issued a Notice of Eligibility to the Claimants, conducted an interview with them, and advised them of the comparable replacement dwelling that was available and would serve as the basis for establishing the upper limit of the replacement housing payment. Moreover, on July 27, 2009, nine days before the date the Claimants were required to move from their displacement dwelling, SRF made another comparable replacement dwelling available to the Claimants and paid the Claimants a $20,000 replacement housing payment based on the cost of that dwelling. Accordingly, the County maintains that it complied with the URA requirement that at least one comparable replacement dwelling must be made available before a displaced person "can be required to move" and urges that summary disposition be granted in its favor in this matter.

In its reply brief, the County further argues that the Claimants have introduced facts that are not part of the agreed-upon stipulated facts, and have based their argument on disputed fact issues. In particular, the County emphasizes that it disputes the Claimants' contentions that the first housing study was flawed and their claim that the County only performed the second study because the first study was defective. The County asserts that the housing replacement payment governed by the URA[55] is not contingent upon compliance with the advisory services that are set forth in separate provisions of the URA and separate subparts of the URA regulations.[56] The County contends that, contrary to the Claimants' assertions, it had no duty to provide a comparable replacement dwelling to the Claimants prior to the time they purchased a replacement home, and maintains that it fully complied with all applicable requirements. The County further argues that an unpublished 2004 Court of Appeals decision supports entry of summary disposition in its favor in this matter.[57]

After careful consideration of the parties' competing arguments, the Administrative Law Judge concludes that it is appropriate to grant the County's motion for summary disposition and deny the Claimants' motion. There is no explicit requirement under the MURA or the URA that displaced homeowners be provided a comparable replacement dwelling that serves as the basis for their housing replacement payment prior to the time that they *purchase* a replacement home. The URA regulations merely require the acquiring authority to: (1) make available at least one comparable replacement dwelling before the displaced person is required to move (49 C.F.R. § 24.204(a)); (2) inform displaced persons of this requirement and provide "current and continuing information on the

[55] 42 U.S.C. § 4623 and 49 C.F.R. § 24.401-404.
[56] 42 U.S.C. § 4625 and 49 C.F.R. § 24.205.
[57] *Pickering v. City of Plymouth,* No. A03-821, 2004 WL 728147 (Minn. App. 2004) (unpublished) (attached to County's Reply Brief).

availability, purchase prices, and rental costs of comparable replacement dwellings" (49 C.F.R. § 24.205(c)(2)(ii)(A)); and (3) inform the person in writing "as soon as feasible" of the specific comparable replacement dwelling, price, and basis for the agency's determination of the upper limit of the replacement housing payment "so that the person is aware of the maximum replacement housing payment for which he or she may qualify" (49 C.F.R. § 24.205(c)(2)(ii)(B)).

There is a dispute between the parties concerning the sufficiency of the first study and the reasons for performance of the second study, and neither party is entitled to entry of summary disposition with respect to the first study. However, the parties agree (as reflected in the Stipulation of Facts[58] and the Claimants' motion papers[59]) that the County provided them with a comparable replacement dwelling on July 27, 2009, at the latest. Accordingly, it is evident that the County complied with its obligation to provide a comparable replacement dwelling before the Claimants were required to move on August 5, 2009, and thereby satisfied the first and second requirements set forth above.

The crux of the Claimants' argument is that the County failed to meet its obligations under the third requirement noted above to inform them "as soon as feasible" of the comparable dwelling used to determine the upper limit of their replacement housing payment. Because the Claimants were not aware of the maximum replacement housing payment for which they would qualify at the time they purchased their new home, they argue that they are entitled to an increased replacement housing payment.

It is not possible to determine on this record whether or not the County provided the information required by 49 C.F.R. § 24.205(c)(2)(ii)(B) "as soon as feasible." However, even assuming for the purposes of these motions that the County did not do so, the Administrative Law Judge is not persuaded that the appropriate remedy for this failure is to increase the amount of the housing replacement payment to which the Claimants are entitled. The regulation itself does not expressly require that the information be provided prior to the time the displaced homeowner purchases a replacement home, nor does it specify any consequence for situations in which an acquiring authority fails to provide the information "as soon as feasible."[60] Moreover, there is no suggestion anywhere

[58] Stipulated Facts, ¶ 14.

[59] Claimants' Reply Memorandum at 5. The Claimants also agreed that the County met the requirements set forth in 49 C.F.R. 24.205(c)(2)(ii)(A).

[60] This was recognized in an analogous context in a 2005 business relocation benefit case involving Hennepin County. *See* Order on Motion for Summary Disposition in *In the Matter of the Application for Relocation Benefits for P. Heck Design, Inc.,* OAH Docket No. 1-6220-16363-3 (2005) (claimant alleged that it would not have accepted a fixed relocation payment if it had been appropriately advised by the county of the full amount of actual relocation benefits for which it was eligible; ALJ noted that there was no consequence in the statute or regulations for failure to comply with the requirements for providing assistance to a displaced person, and the question of the adequacy of relocation services was not a material fact that must be determined for purposes

in the language of the MURA, the URA, or the URA regulations that the amount of the housing replacement payment is contingent on the acquiring authority carrying out its obligations to provide advisory services such as those required by section 24.205(c)(2)(ii)(B).[61]

While the Court of Appeals' decision in the *Pickering v. City of Plymouth* case was unpublished and therefore is not precedential,[62] the Court's analysis of an analogous issue raised in that case provides further support for this conclusion. In *Pickering,* the city had entered into a contract for deed with the Pickerings to acquire their property for a road improvement project. The city did not provide the Pickerings with relocation assistance services or give them information about eligibility for relocation benefits. The Pickerings searched for a replacement house on their own, found none to their satisfaction, and ultimately built a new house on a lot they owned in Big Lake Township. They thereafter applied for relocation benefits under the MURA and sought to obtain a housing replacement differential equivalent to the difference between the acquisition cost of their Plymouth house ($225,000) and either the cost of their new house ($553,547) or the listing price of a comparable replacement house. A hearing officer found that the Pickerings were eligible for relocation benefits despite the voluntary nature of their sale to the city because they were "displaced persons" and awarded reasonable moving expenses and closing costs for the purchase of their replacement house. However, the hearing officer declined to award a housing-replacement differential to the Pickerings based upon his conclusion that the most closely comparable replacement dwelling available within a reasonable time of the city's offer sold for $220,000, and other reasonably comparable replacement housing was available in the Plymouth market for $225,000 or less. The Pickerings thereafter appealed the decision to the Court of Appeals.

On appeal, the Court of Appeals affirmed the hearing officer's determination in an unpublished decision. The Court of Appeals found that Plymouth had "determined in good faith that the Pickerings were not entitled to relocation-assistance services because they conveyed their property voluntarily." The Court further found that the Pickerings did not request relocation-assistance services or retain a realtor, but independently concluded that there were no comparable replacement dwellings in Plymouth and elected to build outside the city. The Court concluded that "[t]he city should not be required to pay for the option the Pickerings chose, notwithstanding its failure to make a comparable replacement dwelling available to them before they moved."[63] The Court thus held that the amount of the housing replacement payment is *not* contingent on whether the acquiring authority satisfied its duty to make a comparable replacement dwelling available to the displaced homeowners before they moved:

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of the motion; ALJ concluded that having made an election to receive a fixed payment, claimant could not later file an actual cost claim).

[61] In fact, neither the MURA nor the URA set forth this requirement; it appears only in the URA regulations.

[62] *See* Minn. Stat. § 480A.08(3).

[63] *Id*.

> Notwithstanding the regulation's [49 C.F.R. § 24.401(c)] clear and unambiguous language, the [homeowners] argue that they are entitled to a price differential based on the cost of the house they actually built and occupied because the city breached its duty to make a comparable replacement dwelling available to them before they moved. Although an acquiring authority must make a comparable replacement dwelling available to a homeowner before *requiring* the homeowner to move, the MURA does not make the amount of the price differential contingent on the acquiring authority's duty to provide a comparable replacement dwelling. *See id.* § 24.401(c) (describing the price differential to be paid to an eligible homeowner). Only the authority to require a homeowner to move is contingent on such a duty. *See id*. § 24.204(a).[64]

The same rationale applies in the present case.

Upon completion of the second study, the County arrived at a revised housing replacement payment of $20,000, based upon the difference in cost between the comparable dwelling it identified at that time ($269,900) and the acquisition cost of Claimants' displacement dwelling ($249,900). This amount was calculated in accordance with the applicable URA rules and is within the $22,500 cap generally imposed under the URA.

The Claimants contended during the motion argument that the "replacement housing of last resort" exception to the monetary cap should be applied to increase the housing replacement payment for which they are eligible. However, that exception only applies when comparable replacement dwellings are *not* available within the monetary limits. There is undisputed evidence that at least one comparable replacement dwelling within the monetary limits was available within the relevant time frame, based on the parties' stipulation that the dwelling identified by the County on July 27 qualified as a comparable replacement dwelling under the URA. In addition, the parties' stipulation that this home was "made available" on July 27 implies that the parties agree that the Claimants had sufficient time to negotiate and enter into a purchase agreement or lease for the property.[65] The Claimants have not supplied any affidavits that would tend to support the application of the exception in the present case or create a genuine issue of material fact requiring a hearing.

It is unfortunate that the Claimants were not notified of the results of the second housing study prior to the time they decided to purchase a new home for

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[64] 2004 WL 728147 at *5 (emphasis added).

[65] Under 49 C.F.R. § 24.204(a), a comparable replacement dwelling is considered to have been made available if the person to be displaced "is informed of its location," "has sufficient time to negotiate and enter into a purchase agreement or lease for the property," and "is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property" subject to "reasonable safeguards."

far more than the cost of their displacement home. However, they had been informed in November 2008 that they would not qualify for *any* replacement housing payment, and there is no evidence that they ever received any notification from the County that this calculation was incorrect. Moreover, based on the stipulated facts, they did not inform the County of their objections to the first housing study until nearly five months after it was issued, and did not request that the County perform a second housing study until June 4, 2009, just three weeks before they entered into a purchase agreement to convey their prior home to the County. Without waiting for the results of the second study, the Claimants selected their new home by June 25, 2009 (since they requested a closing date of July 17, 2009, on the County's purchase of their old home to coincide with the purchase of their new home), and proceeded to complete the purchase of their new home on July 20, 2009. The Claimants were not required to move out of their old home until August 5, 2009. Most importantly, even if the County failed to make a comparable dwelling available "as soon as feasible," the applicable statutes and rules do not require that the replacement housing payment be increased.

Under all of the circumstances, the Administrative Law Judge concludes that the County is entitled to judgment as a matter of law in this case.

B. L. N.